

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL CASE NO. 3:20-cv-00286-MR**

<b>JOHN THOMAS JONES, III,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>TONI SELLERS HAIRE, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**THIS MATTER** is before the Court *sua sponte*.

The *pro se* incarcerated Plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983 addressing allegedly deficient medical care he received for a broken ankle at Lanesboro Correctional Institution. The Complaint passed initial review on October 20, 2020, on claims that several Lanesboro C.I. employees, including Toni Sellers Haire, were deliberately indifferent to a serious medical need. [Doc. 11]. That same day, the Court commenced the procedure for waiving service of process with the North Carolina Department of Public Safety (“NCDPS”). [Doc. 12]. NCDPS was unable to waive service for Defendant Haire. [Doc. 20]. The Court accordingly ordered the U.S. Marshals Service (“USMS”) to use all reasonable efforts to locate and serve Defendant Haire on January 6, 2021. [Doc. 24]. On March 10, 2021, USMS

returned the summons for Defendant Haire as unexecuted, stating “unable to deliver as addressed. No forward.” [Doc. 38 at 1].

The Federal Rules of Civil Procedure allow a court to dismiss *sua sponte* unserved defendants after 90 days following the filing of the complaint. Fed. R. Civ. P. 4(m); see also Fed. R. Civ. P. 6(b)(1)(B) (when an act must be done within a specified time, a court may, for good cause, extend that time on motion made after the time has expired if the party failed to act because of excusable neglect). This period is tolled until frivolity review is complete and the district court authorizes service. See Robinson v. Clipse, 602 F.3d 605 (4<sup>th</sup> Cir. 2010).

On April 15, 2021, the Court ordered the Plaintiff to show cause, within 14 days, why Defendant Haire should not be dismissed from this action pursuant to Rule 4(m). [Doc. 39]. The Plaintiff was cautioned that the failure to comply with the Order would likely result in the dismissal of Defendant Haire from this action without prejudice and without further notice. [Id. at 9]. The Plaintiff has failed to file a response, and the time to do so has expired. Defendant Haire will therefore be dismissed from this action without prejudice.

**IT IS THEREFORE ORDERED** that Defendant Toni Sellers Haire is **DISMISSED WITHOUT PREJUDICE** from this action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**

Signed: May 21, 2021



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Martin Reidinger  
Chief United States District Judge

